

period of time, but reported at the time she went to work for respondent she was feeling good. It is undisputed that claimant failed to advise respondent of her back injuries with Ron's IGA at the time of her hire, for fear of not getting hired.

At preliminary hearing, claimant denied having any back injuries prior to her employment with Ron's IGA. However, claimant was then shown an accident report regarding an accident she suffered in 1988 while employed with IBP, Inc. Claimant was also provided documentation showing she suffered an injury in March 1992 to her back while working for the Bethesda Nursing Center. She received a workers compensation settlement for this injury. Claimant also suffered injury while working for Midwest Solutions in 1995 with injury to her low back and neck. In 1996, claimant was convicted of passing bad checks.

At the time claimant went to work for respondent, she still had not been released by Dr. Matthew M. Keum, her treating physician. Claimant was examined by Dr. Brian D. Wolfe, a family practice specialist in Iola, Kansas. Dr. Wolfe opined that claimant's ongoing symptomatology related not to her injury with Russell Stover, but rather to the preexisting injury sustained by claimant prior to her work with Russell Stover.

In reviewing the evidence in the record, it is apparent that whether claimant suffered accidental injury arising out of and in the course of her employment hinges almost entirely upon claimant's credibility. The credible medical evidence shows preexisting symptoms and problems from prior injuries to claimant's low back, upper back and neck. Claimant attempted to deny the existence of several of these prior injuries and the existence of at least one prior workers compensation settlement. In instances where witnesses testify in person before an administrative law judge at a preliminary hearing, the administrative law judge has a significant advantage in being able to assess one's credibility or lack thereof. The Appeals Board gives some deference to this opportunity on the part of the administrative law judge to assess the credibility of the claimant. Here, it is apparent from the denial of benefits that the administrative law judge found claimant's credibility in this case to be lacking. In addition, the medical evidence from Dr. Wolfe places the responsibility for claimant's inability to work on the preexisting conditions, and not the alleged injury or aggravation at Russell Stover Candies.

The Appeals Board finds that claimant has failed to prove accidental injury arising out of and in the course of her employment with respondent on the date alleged, and the denial of benefits by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated August 14, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Brenden W. Webb, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director